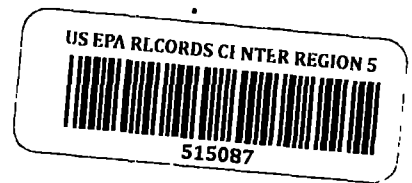


ENVIRONMENTAL PROTECTION AGENCY
Region V
Enforcement Division



TELEPHONE MEMO

TO : Dale Bryson

DATE: February 6, 1981

FROM : Bob Leininger

TIME:

SUBJECT: Superfund

I feel very strongly that we need to maintain a certain amount of control over Superfund, especially with regard to those cases where litigation is underway or contemplated.

You already know what happened with the Reilly case. Our enforcement action under RCRA is by no means airtight and the defendant is going to file a Motion to Dismiss shortly. Superfund gives us another important enforcement tool which can and should be used. The following provisions can be indispensable when used under appropriate circumstances in an enforcement case:

Section 104(e)-allows us to obtain and copy the records of any person who stores, treats or disposes of hazardous waste, and generators, transporters and handlers of the waste. It also allows us to obtain samples of the waste.

Section 106(a)-allows us to have the US Attorney bring an action to abate an imminent hazard, similar to RCRA and allows for the issuance of orders.

(b)-sets a 5000 dollar fine for willful failure to obey an order.

Section 107(a)- makes owners, operators, transporters and generators liable for all costs for removal, remedial action, or any other necessary costs which we have incurred as well as damages for injury to the natural resources.

(c)(3)- provides treble punitive damages for failure to obey an order issued pursuant to Section 104 or 105.

(f)- allows the president or the State to act on behalf of the public to recover for the injury, destruction or loss of natural resources in the amount needed but not limited to the amount needed to restore or rehabilitate such natural resources.

Note that Section 107 does not appear to require us to spend any money as a condition precedent to bringing an action. In fact, the state of Minnesota wants to amend their

006069

Complaint in Intervention to add an additional count
under Section 107 of Superfund.

Section 101(16)- gives the definition for "natural resources" in
very broad terms, except that it is limited to
Resources which are controlled by the Federal, State
or local governments. (Reilly is owned by local
government).

I know that you are going to present a strong Enforcement Division
position at your meeting on Monday. I hope that this memo will
help you to set forth some convincing arguments to allow this
Division to properly use Superfund. I think that it is clear that
under many circumstances we should have the responsibility for carrying
out the enforcement provisions of Superfund.

cc: Fenner
Grimes
Schulteis
Miner/Muno
Voepfer

006070